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NETWORK APPLIANCE, INC.,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NETWORK APPLIANCE, INC.

Plaintiff,

v.

SUN MICROSYSTEMS, INC.

Defendant.

Case No. 3:07-CV-06053-EDL

**DECLARATION OF EDWARD REINES
IN SUPPORT OF NETWORK
APPLIANCE'S MOTION OF
ADMINISTRATIVE RELIEF
REQUESTING PROMPT CMC**

1 I, Edward R. Reines, declare:

2 1. I am a member of the Bar of this Court and a partner at the law firm of
3 Weil, Gotshal & Manges LLP, counsel of record for the Plaintiff Network Appliance, Inc.
4 (“NetApp”), in this case. I submit this declaration pursuant to Civil Local Rule 7-11(a). If called
5 upon as a witness, I could competently testify to the truth of each statement herein.

6 2. As explained in NetApp’s Motion for Administrative Relief, time is of the
7 essence in this action to prevent the proliferation of infected “open-source” software code into the
8 public domain. NetApp thus initially filed this action in the Eastern District of Texas in view of
9 that district’s reputation for speed.

10 3. To avoid undue delay and dispute, NetApp agreed to transfer this case to
11 Your Honor with the explicit understanding that prompt resolution of this case could be
12 accomplished. Indeed, prior to agreeing to the transfer, the parties held a teleconference with
13 Your Honor in which the this Court confirmed that it could accommodate a Case Management
14 Conference (“CMC”) as early as December so that this case could proceed forthwith. During the
15 teleconference, Sun’s counsel raised no objection to a possible December CMC. Furthermore,
16 the joint motion transferring this action expressly noted that Your Honor “has agreed to hear this
17 matter and to conduct a *prompt* Case Management Conference.” *See* Exhibit A, *infra*. (emphasis
18 added).

19 4. Accordingly, on November 30, 2007, I sent an e-mail to Mark Fowler, one
20 of Sun’s attorneys, proposing that the CMC take place on January 8, 2008. *See* Exhibit B, *infra*.

21 5. On December 2, 2007, I received a reply e-mail from Mr. Fowler
22 confirming that Sun “agreed to a prompt CMC in the Texas case, so as to not materially delay the
23 progress of that case in light of the transfer.” *Id*. However, Mr. Fowler’s email did not provide a
24 definite answer concerning the proposed January 8, 2008 CMC date, nor did Sun provide one
25 prior to the issuance of the automatic scheduling order on December 4, 2007.

26 6. After the automatic scheduling order issued, I received an email from
27 Carrie Williamson, another Sun attorney, proposing that the Court hold the initial CMC on March
28 11, 2008, as provided in the automatic scheduling order. *Id*.

1 7. In an attempt to reach agreement and avoid motion practice, I conferred
2 further with Ms. Williamson by both telephone and e-mail on December 4, 2007. I explained to
3 Ms. Williamson that a March 11, 2008 case management conference is inconsistent with the
4 parties' agreement to conduct a prompt CMC and would result in the CMC being held later than
5 if the case had remained in Texas. Ms. Williamson was clear that Sun would not agree to a CMC
6 in January and that this was not as a result of problems with personal schedules.

7 8. Unable to reach agreement, NetApp brings this Motion for Administrative
8 Relief to obtain the prompt CMC that was a primary element of the parties' agreement to transfer
9 this case to this Court.

10 9. Attached as Exhibit A to this Declaration is a true and correct copy of the
11 parties' Agreed Motion to Transfer, filed in Civil Action No. 9:07-cv-206 (RHC) (E.D. Tex.) on
12 November 21, 2007.

13 10. Attached as Exhibit B to this Declaration is a true and correct copy of a
14 series of e-mails exchanged between counsel for NetApp and Sun.

15 11. Attached as Exhibit C to this Declaration is a true and correct copy of the
16 Order Governing Proceedings entered by the Court in Civil Action No. 9:07-cv-206 (RHC) (E.D.
17 Tex.) on November 21, 2007.

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1 Dated: December 4, 2007

Respectfully submitted,

2
3 /s/ Edward R. Reines

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